

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRITTANY BURK, on behalf of herself	§	
and all others similarly situated,	§	
	§	
Plaintiff,	§	
	§	Case No. 4:19-cv-663
v.	§	
	§	
DIRECT ENERGY, LP,	§	
	§	
Defendants	§	

**DEFENDANT DIRECT ENERGY, LP'S EVIDENTIARY APPENDIX IN
SUPPORT OF ITS RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION TO SUBSTITUTE CLASS REPRESENTATIVE**

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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRITTANY BURK, on behalf of herself	§	
and all others similarly situated,	§	
	§	
Plaintiff,	§	
	§	Case No. 4:19-cv-663
v.	§	
	§	
DIRECT ENERGY, LP,	§	
	§	
Defendants	§	

**DECLARATION OF MICHAEL D. MATTHEWS, JR.
IN SUPPORT OF DIRECT ENERGY’S OPPOSITION TO PLAINTIFF’S
MOTION TO SUBSTITUTE CLASS REPRESENTATIVE**

I, Michael D. Matthews, Jr., hereby declare as follows:

1. I am over the age of twenty-one and am fully competent to make this declaration. I have never been convicted of a felony. The statements contained herein are true and correct and are within my personal knowledge.

2. I am an attorney and partner with the law firm of McDowell Hetherington LLP, in its office located at 1001 Fannin Street, Suite 2700, Houston, Texas 77002. I am and have been admitted to practice law, and I am a member in good standing of the bars of the States of Texas and New York. I represent Defendant Direct Energy Services, LP, in the above-captioned matter.

3. On November 15, 2020, I googled Ms. Burk’s name in preparation for her deposition. That search revealed several pre-suit arrests.

4. The discovery of Ms. Burk's criminal history prompted further investigation, which continued after Ms. Burk's first deposition. A summary of the criminal records revealed by that investigation is attached as **Exhibit 1-A**.

5. The following exhibits attached hereto are true and correct copies of relevant excerpts from the transcripts of depositions taken in connection with this litigation:

Exhibit 1-B: Transcript of the deposition of Brittany Burk taken November 17, 2020.

Exhibit 1-C: Transcript of the deposition of Andrew Dorko taken February 23, 2021.

6. The following exhibits attached hereto are true and correct copies of transcripts from proceedings held in the litigation:

Exhibit 1-D: Transcript of proceedings held on December 9, 2020.

Exhibit 1-E: Transcript of proceedings held on December 21, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2021.



Michael D. Matthews, Jr.

EXHIBIT 1-A

Brittany Burk Criminal History Summary

Offense Date	Charge	Offense Level	Jurisdiction	Time in Jail
03.14.11	Drug Possession	Class A Misdemeanor PC § 481.117(b) Penalty Group 3 – e.g., opioids, benzos, valium, Ritalin, etc.	Henderson Co. Court at Law 2	09.20.11 – 09.22.11 01.20.12 – 02.02.12
03.14.11	Drug Possession	Class B Misdemeanor § 481.121(b)(1) - Marijuana <2 oz	Henderson Co. Court at Law 2	09.20.11 – 09.22.11 01.20.12 – 02.02.12
03.14.11	Drug Possession	Class A Misdemeanor PC § 483.041 - Prescription drug w/o Prescription	Henderson Co. Court at Law 2	09.20.11 – 09.22.11 01.20.12 – 02.02.12
01.21.13	Failure to Appear	Class C Misdemeanor PC § 38.10	Gun Barrel City PD Henderson Co. JP2	01.22.13 – 02.03.13
03.20.13	Theft of Property \$500 - \$1500 (cell phone)	Class A Misdemeanor PC § 31.03(e)(3)	Henderson Co. Sheriff / Henderson Co. Court at Law	Unknown
09.14.14	Hindering apprehension of a known felon	Third Degree Felony PC § 38.05(d)	Henderson Co. Sheriff / Henderson Co. 173 rd Dist. Ct.	Booked/released 09.14.14, 12.30.14 – 01.02.2015
09.14.14	Disorderly Conduct	Class C Misdemeanor	Henderson Co. Sheriff / Henderson Co. 173 rd Dist. Ct.	N/A
03.03.18	Possession of Drug Paraphernalia	Class C Misdemeanor HSC § 481.125	Payne Springs PD / Payne Springs Muni Court	04.06.18 – 04.07.18
03.20.18	Failure to Appear	Class C Misdemeanor PC § 38.10	Payne Springs PD / Payne Springs Muni Court	04.06.18 – 04.07.18
04.02.20	Criminal Trespass	Class B Misdemeanor	Henderson Co. Sheriff / Henderson Co. Court at Law 2	04.20.20 – 04.21.20
04.19.20	Criminal Trespass with a Deadly Weapon	Class A Misdemeanor PC § 30.05(d)(3)(C)	Henderson Co. Sheriff / Henderson Co. Court at Law 2	04.20.20 – 04.21.20
05.18.20	Criminal Trespass	TBD (arrest only to date)	Henderson Co. Sheriff	Booked/released 05.18.20

EXHIBIT 1-B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRITTANY BURK, on behalf of)
herself and others similarly)
situated)
Plaintiffs,) Cause No.:
4:19-cv-00663)
vs.)
DIRECT ENERGY, LP,)
Defendant.)

ORAL ZOOM DEPOSITION
BRITTANY BURK
NOVEMBER 17, 2020
VOLUME 1

ORAL VIDEOTAPED ZOOM DEPOSITION OF BRITTANY
BURK, produced as a witness at the instance of the
Defendant and duly sworn, was taken in the
above-styled and numbered cause on November 17,
2020, from 10:00 a.m. to 2:04 p.m., before Jill M.
Vaughan, Certified Shorthand Reporter in and for the
State of Texas, reported by computerized stenotype
machine. The witness appeared remotely at 113
Pawnee Trail, Mabank, Texas. The deposition was
taken pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or

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1 APPEARANCES	1 THE COURT REPORTER: Today's date is
2 FOR THE PLAINTIFFS:	2 November 17, 2020. The time is 10:00 am. This is the
3	3 deposition of Brittany Burk. This deposition is being
4 Mr. Gary Klinger (Via Zoom)	4 conducted remotely by agreement of the parties or in
5 Mason Lietz & Klinger, LLP	5 accordance with the current Emergency Orders. The
6 227 W. Monroe St.	6 witness is located at 113 Pawnee Trail, Mabank, Texas.
7 Suite 2100	7 My name is Jill Vaughan with Veritext. I am
8 Chicago, IL 60606	8 administering the oath and reporting the deposition
9 312-283-3814	9 remotely by stenographic means. Would you raise
10 gklinger@masonllp.com	10 your right hand.
11 FOR THE DEFENDANT:	11 BRITTANY BURK
12 Mr. Michael D. Matthews, Jr. (Via Zoom)	12 having been first duly sworn, testified as
13 Mr. William B. Thomas	13 follows:
14 MCDOWELL HETHERINGTON	14 EXAMINATION
15 1001 Fannin	15 BY MR. MATTHEWS:
16 Suite 2709	16 Q. Good morning, Ms. Burk. My name is
17 Houston, TX 77002	17 Matt Matthews. I represent Direct Energy in this
18 713-337-5580	18 lawsuit. You understand that, right?
19 matt.matthews@mhlhp.com	19 A. Yes, sir.
20	20 Q. Also with me today on my screen is my
21	21 colleague Will Thomas. And I think you know
22	22 Mr. Klinger. I'll be the one asking you questions
23	23 today, at least from our side; and I will try to do my
24	24 best to be efficient and not go longer than it needs
25	25 to go. But thank you for being here today.
Page 3	Page 5

<p>1 Q. You got into an accident and Allstate didn't 2 pay? 3 A. Yes. 4 Q. Are there any other lawsuits that you filed 5 as a plaintiff? 6 A. No, sir. 7 Q. Have you been a defendant in any other 8 lawsuit? 9 A. No, sir. 10 Q. Nobody has ever sued you? 11 A. No, sir. 12 Q. Have you a letter to any other companies 13 complaining about telemarketing? 14 MR. KLINGER: Object to form, vague. You 15 can answer. 16 A. No, sir. 17 Q. (By Mr. Matthews) When you sent a letter 18 or email or called, whatever, have you collected any 19 money from any other telemarketing demand? 20 A. No, sir. 21 Q. Ms. Burk, have you ever been arrested? 22 A. Yes, sir. 23 MR. KLINGER: Object to the form. 24 Q. (By Mr. Matthews) When was that? 25 A. 2011.</p> <p style="text-align: right;">Page 114</p>	<p>1 Q. I understand but confidentiality is not an 2 objection that's valid in this case. My client has 3 had to produce a fair amount of confidential 4 information and has done so under the protective order 5 in the case. So again what were you arrested for in 6 2011? 7 MR. KLINGER: And I'll just put an objection 8 on the record as to relevance. Again Brittany, it's 9 your choice to respond. 10 A. I choose not to answer. 11 Q. (By Mr. Matthews) I want to be clear, 12 relevance is not a valid objection in a deposition 13 like this. So I have -- I'm going to ask again. I 14 want to tell you if you don't answer these questions 15 about the arrests, I'm going to -- again I'm not 16 trying to be mean. I'm entitled to find out this 17 information. And the court may never admit it in 18 this case, but I get to ask and find out that 19 background. So if you are not willing to answer, 20 I'm going to ask the judge and make you sit for 21 another deposition where I get to ask you these 22 questions again. And I think he's going to let me 23 do it. 24 MR. KLINGER: I'll just object again as 25 asked and answered. And, Matt, perhaps if we went off</p> <p style="text-align: right;">Page 116</p>
<p>1 Q. I'm sorry, 2011 you said? 2 A. Yes, sir. 3 Q. What were you arrested for? 4 A. I choose not to answer. 5 Q. Well, it's -- you kind of have to. 6 MR. KLINGER: I missed that question, Matt. 7 Do you mind -- and I missed the response. 8 MR. MATTHEWS: Sure, I don't mind. I said 9 what was the arrest for and Ms. Burk said that she 10 would choose not to answer. 11 MR. KLINGER: Okay. Ms. Burk, Brittany, are 12 you choosing not to disclose details of the -- of what 13 you believe was an arrest? 14 THE WITNESS: Yes, sir. 15 Q. (By Mr. Matthews) Ms. Burk, I'm going to 16 ask again because I'm not trying to be rude or 17 anything like that, but I'm entitled to ask 18 questions about the background and things of this 19 nature. We can -- you know, if you want to 20 designate it confidential, you're free to do that; 21 but issues like this can be relevant. They may not 22 be admissible, but I get to ask about them. 23 So in 2011 what were you arrested 24 for? 25 A. Confidential.</p> <p style="text-align: right;">Page 115</p>	<p>1 the record, we could come to some accord. I just 2 would need a minute to chat with my client. 3 MR. MATTHEWS: Okay. 4 MR. KLINGER: Do you want me to do that? 5 MR. MATTHEWS: Yes, because I'm going to ask 6 -- I have, you know, I certainly have a right to an 7 answer to some of these questions. And I don't want 8 to be difficult about it. I don't want to come back 9 and do another deposition. But this is perfectly 10 normal, and I'm entitled to an answer. So please do, 11 we can take a quick break. 12 MR. KLINGER: Let's take a five-minute 13 break, and then do you think you maybe 20 or 30 14 minutes left? 15 MR. MATTHEWS: Maybe less. 16 MR. KLINGER: So let's take a quick 17 five-minute break. Brittany, I am going to call your 18 cell phone, and then we can chat. Okay? 19 THE WITNESS: Yes, sir. 20 (Recess taken) 21 Q. (By Mr. Matthews) We're back from break, 22 Ms. Burk. Thanks for making time for that break and 23 speaking to Mr. Klinger. So now I'm going to go 24 back to that line of questioning. And again I'm not 25 trying to be rude. Just, you know, I've got to</p> <p style="text-align: right;">Page 117</p>

<p>1 represent my client to the best of my ability, and 2 it may be a rabbit trail I don't have to run down. 3 There may be nothing there, but I still have to 4 look. 5 So the first time you were arrested 6 was in 2011? 7 A. Yes, sir. 8 Q. What was that arrest for? 9 A. It was misdemeanor drug charge, and I'm 10 embarrassed to announce. So... 11 Q. I'm not trying to embarrass you or anything 12 like that. And, you know, I understand why you feel 13 that way, if you'd like to make anything confidential, 14 that's your right to do it. However, I have a right 15 to challenge it if it becomes relevant for some 16 reason. But you said a misdemeanor drug charge? 17 A. Yes. 18 Q. And what was the drug? 19 A. I wish -- I wish not to -- I'm embarrassed 20 of it and wish not to -- to speak of that, I guess. 21 Q. But I think I'm entitled to know. So what 22 was the drug that was part of the charge? 23 A. It was just a dangerous drug misdemeanor. 24 Q. I understand. What drug specifically? 25 A. That was the charge, sir.</p> <p style="text-align: right;">Page 118</p>	<p>1 A. Like I said, I choose not to disclose that 2 information. If the judge requires it, we'll discuss 3 at that time. 4 Q. (By Mr. Matthews) If the judge requires 5 it, you'll discuss it at that time? 6 A. Correct. 7 Q. Ms. Burk, I don't want to have to go to him 8 and talk about that. I really don't because it's 9 going to be additional cost and expense for everybody. 10 And if I have to do it, I'm going to ask that the 11 costs of the additional deposition be paid by you, not 12 by my client. This is a routine thing. I'll ask one 13 more time and if you want to refuse to answer, then 14 with the understanding of what I may do afterwards, 15 then so be it. But what was the drug that was 16 involved in that charge? 17 A. I choose not to disclose. 18 Q. Okay. Have you been arrested any other 19 times? Ms. Burk? Are there other times that you've 20 been arrested? 21 A. No, sir. 22 Q. Your testimony is that in 2011 is that the 23 only time that you've been arrested? 24 A. Yes, sir. 25 MR. KLINGER: Object to the form. You can</p> <p style="text-align: right;">Page 120</p>
<p>1 Q. That's not my question. My question was: 2 What drug were you charged with? Was it possession? 3 MR. KLINGER: Well, I think this is my 4 understanding, it's her testimony that it's a 5 misdemeanor drug charge and that, you know, she's not 6 comfortable disclosing the nature of the drug. You 7 know, I'm not -- if she's not comfortable disclosing 8 that, I'm not going to ask her to speak to that. I 9 don't know how it's -- I can understand how -- what 10 the nature of the arrest was, why that would be 11 relevant which is why I allowed you to probe, but this 12 in my opinion doesn't go to anything like credibility 13 or anything like that. You may differ, but I don't 14 see how if she's embarrassed to disclose the nature of 15 the drug that she would be required to do so. 16 MR. MATTHEWS: It may not end up being 17 admissible, it may not end up being relevant; but I'm 18 entitled to discovery about it, to make that 19 discovery. 20 Q. (By Mr. Matthews) Ms. Burk, what was the 21 drug that was involved in that charge? 22 MR. KLINGER: I'll just state the same 23 objection. And, Ms. Burk, if you were not inclined to 24 disclose the nature of the drug that's your choice. 25 We'll deal with it if we have to.</p> <p style="text-align: right;">Page 119</p>	<p>1 answer. 2 A. Yes, sir. 3 Q. (By Mr. Matthews) Ms. Burk, I'll represent 4 to you I have found public records of additional 5 arrests. And I've found mugshots of additional 6 arrests. So I'm going to ask you the question 7 again. Is it your testimony that you have only been 8 arrested one time in 2011 when you were -- 9 MR. KLINGER: Go ahead and finish. Object 10 to the form. Matt, if you have the record and you 11 want to show her, perhaps a misunderstanding, you 12 know. I would highly suggest that you show them. 13 A. That's my only conviction. 14 Q. (By Mr. Matthews) Okay. I understand. 15 I'm going to ask about convictions in a minute, but 16 I'm -- right now I'm just asking about arrests. So 17 the first time you were arrested was in 2011 for a 18 drug charge; is that right? Is that right? 19 A. Yes, sir. 20 Q. And you're unwilling to tell me what the 21 drug was? 22 A. Yes, sir. 23 Q. Was it a possession charge or intent to 24 distribute? Ma'am? 25 A. No, sir. It was misdemeanor drug charge.</p> <p style="text-align: right;">Page 121</p>

<p>1 Q. Just possession?</p> <p>2 A. Just misdemeanor, yes.</p> <p>3 Q. I'm not asking about the qualifications.</p> <p>4 What were you charged with doing, possessing a drug or</p> <p>5 trying to sell it?</p> <p>6 A. Possessing.</p> <p>7 Q. What was the --</p> <p>8 MR. KLINGER: Object to the extent you're</p> <p>9 required to speculate. And if you don't understand</p> <p>10 the nature, then you can say that.</p> <p>11 Q. (By Mr. Matthews) And you were convicted</p> <p>12 of that crime; is that right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What was your sentence?</p> <p>15 MR. KLINGER: Object to the extent it calls</p> <p>16 for legal conclusion. If you understand the sentence,</p> <p>17 then respond; but if you do not know, do not guess.</p> <p>18 THE WITNESS: Was that directed to me?</p> <p>19 Q. (By Mr. Matthews) Yes, ma'am.</p> <p>20 A. 15 days.</p> <p>21 Q. 15 days. And in what correctional facility?</p> <p>22 A. In the county.</p> <p>23 Q. Henderson County?</p> <p>24 A. Kaufman.</p> <p>25 Q. Kaufman County. Ms. Burk, what was the</p> <p style="text-align: right;">Page 122</p>	<p>1 Q. Were you incarcerated the second time you</p> <p>2 were arrested, taken to jail?</p> <p>3 A. I don't recall.</p> <p>4 Q. Were you convicted of any crime after that</p> <p>5 second arrest?</p> <p>6 A. No, sir.</p> <p>7 Q. The charges were dropped?</p> <p>8 A. To the best of my knowledge.</p> <p>9 MR. KLINGER: Objection, calls for a legal</p> <p>10 conclusion.</p> <p>11 Q. (By Mr. Matthews) What was the third time</p> <p>12 you were arrested? When was that?</p> <p>13 A. I don't remember.</p> <p>14 Q. You were arrested --</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. You were arrested a third time, correct?</p> <p>17 A. No, I'm not sure.</p> <p>18 Q. You don't remember if you were arrested</p> <p>19 three times?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you -- as we sit here today you don't</p> <p>22 know if you were arrested more than two times in your</p> <p>23 life?</p> <p>24 A. No, sir.</p> <p>25 Q. Possibly you were?</p> <p style="text-align: right;">Page 124</p>
<p>1 second time you were arrested?</p> <p>2 A. I don't recall.</p> <p>3 Q. You don't recall what year it was?</p> <p>4 A. No, sir.</p> <p>5 Q. Do you recall being arrested a second time?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Do you recall what you were arrested for the</p> <p>8 second time?</p> <p>9 A. I don't remember -- I don't recall.</p> <p>10 Q. Was it another drug charge?</p> <p>11 A. No, sir.</p> <p>12 Q. You have no idea what you were arrested for</p> <p>13 the second time?</p> <p>14 A. No, sir.</p> <p>15 Q. You don't know what year it was?</p> <p>16 A. No, sir.</p> <p>17 Q. Where were you arrested?</p> <p>18 A. I don't remember.</p> <p>19 Q. Do you remember what state you were in when</p> <p>20 you were arrested the second time?</p> <p>21 A. I'm not sure.</p> <p>22 Q. You don't know what state you were in?</p> <p>23 A. No, sir.</p> <p>24 Q. Were you in the United States?</p> <p>25 A. Yes, sir.</p> <p style="text-align: right;">Page 123</p>	<p>1 A. I'm not sure.</p> <p>2 Q. Meaning, yes, it is possible?</p> <p>3 A. I said I'm not sure.</p> <p>4 MR. KLINGER: Object to the extent it calls</p> <p>5 for you to speculation and legal conclusion.</p> <p>6 Q. (By Mr. Matthews) You can remember two</p> <p>7 times in your life that you were arrested, right?</p> <p>8 A. To the best of my knowledge.</p> <p>9 Q. You may have been arrested another time you</p> <p>10 can't remember?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Ms. Burk, I don't mean any judgment in this</p> <p>13 question; but I need to ask this: Have you had drug</p> <p>14 problems in the past?</p> <p>15 A. No, sir.</p> <p>16 MR. KLINGER: Object to form.</p> <p>17 Q. (By Mr. Matthews) No?</p> <p>18 A. No, sir.</p> <p>19 Q. Do you take illicit drugs now?</p> <p>20 A. No, sir.</p> <p>21 MR. KLINGER: Object to the form.</p> <p>22 Q. (By Mr. Matthews) Put a pin in that for</p> <p>23 the moment. Ms. Burk, can you tell me the names of</p> <p>24 the lawyers who are representing you in this case.</p> <p>25 A. Gary and Daniel, I do believe.</p> <p style="text-align: right;">Page 125</p>

32 (Pages 122 - 125)

<p>1 last name that lives in Mabank?</p> <p>2 A. No, sir. What is it in regards to?</p> <p>3 Q. Over the years?</p> <p>4 A. No, sir. What is it regarding?</p> <p>5 Q. Do you -- do you know anyone by the name of</p> <p>6 Gary Hale?</p> <p>7 A. No, sir.</p> <p>8 Q. Do you know anybody with the name of Melissa</p> <p>9 Lucas?</p> <p>10 A. No, sir.</p> <p>11 Q. Melissa Argo, A-r-g-o?</p> <p>12 A. No, sir.</p> <p>13 Q. Melissa Richards?</p> <p>14 A. No, sir.</p> <p>15 Q. Do you know anybody by the name of</p> <p>16 Christopher Layne, L-a-y-n-e?</p> <p>17 A. No, sir.</p> <p>18 Q. Do you know a Chris Layne?</p> <p>19 A. No, sir.</p> <p>20 Q. Trey Layne?</p> <p>21 A. No, sir.</p> <p>22 Q. Do you know Christopher Burroughs?</p> <p>23 A. No, sir.</p> <p>24 Q. Do you know Courtney Mattes, M-a-t-t-e-s?</p> <p>25 A. No, sir.</p> <p style="text-align: right;">Page 130</p>	<p>1 you were giving the deposition?</p> <p>2 A. No, sir.</p> <p>3 Q. Has anybody given you documents during the</p> <p>4 deposition to look at?</p> <p>5 A. No, sir.</p> <p>6 Q. Have you had any notes in front of you while</p> <p>7 I've been asking questions?</p> <p>8 A. No, sir.</p> <p>9 Q. Has anyone sent you any emails or text</p> <p>10 messages about the lawsuit while we've been in this</p> <p>11 deposition?</p> <p>12 A. No, sir.</p> <p>13 Q. Is there anything about your testimony you'd</p> <p>14 like to change?</p> <p>15 A. No, sir.</p> <p>16 Q. Ms. Burk, I'm going to share my screen right</p> <p>17 now and what I want to ask you first is if this is</p> <p>18 you. I'm going to show you a few pictures. This is</p> <p>19 something that I came across, and there are a few</p> <p>20 different mugshots there. I'm not trying to be rude</p> <p>21 or pick on you. I just want to see if this is you.</p> <p>22 That first mugshot, is that you?</p> <p>23 A. Yes.</p> <p>24 Q. What about the second one?</p> <p>25 A. Yes, sir.</p> <p style="text-align: right;">Page 132</p>
<p>1 Q. And Nicole Mattes?</p> <p>2 A. No, sir.</p> <p>3 Q. Have you ever heard any of those people?</p> <p>4 A. No, sir.</p> <p>5 Q. Whether you're acquainted with them or not,</p> <p>6 you've never heard those names?</p> <p>7 A. No.</p> <p>8 Q. You don't know of anyone in the Mabank area</p> <p>9 by those names -- by any of those names?</p> <p>10 A. No, sir.</p> <p>11 MR. MATTHEWS: Let's take a break real</p> <p>12 quick. I'm going to kind of look over my notes, see</p> <p>13 if I have any clean-up things that I need to do and</p> <p>14 then we can come back. So maybe ten minutes.</p> <p>15 (Recess taken)</p> <p>16 MR. MATTHEWS: I'm going to see if I can</p> <p>17 share the screen real quick just so -- I'm going to</p> <p>18 share my screen, and I don't think it's working.</p> <p>19 Q. (By Mr. Matthews) Really quick while I'm</p> <p>20 trying to fix that, Ms. Burk, at the beginning of</p> <p>21 the deposition I asked you if anybody else was there</p> <p>22 with you in your house; and at the time it was just</p> <p>23 your dad, right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Has anybody else come into the house while</p> <p style="text-align: right;">Page 131</p>	<p>1 Q. And what about the third? There are two</p> <p>2 that appear to be the same, like, duplicates.</p> <p>3 A. Yes.</p> <p>4 Q. So we're now clicking on a third unique</p> <p>5 photo. Is that also you?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Looking at these pictures, does that refresh</p> <p>8 your recollection about when you may have been</p> <p>9 arrested?</p> <p>10 A. No, sir.</p> <p>11 Q. You couldn't tell me anything about the</p> <p>12 years other than the one arrest you told me about in</p> <p>13 2011?</p> <p>14 A. No, sir.</p> <p>15 Q. You don't remember anything about the</p> <p>16 charges?</p> <p>17 A. No, sir.</p> <p>18 Q. Do you remember being arrested for criminal</p> <p>19 trespass?</p> <p>20 A. No, sir.</p> <p>21 Q. You deny being arrested for criminal</p> <p>22 trespass, or you just don't remember?</p> <p>23 A. Just don't remember.</p> <p>24 MR. MATTHEWS: Let's scroll down a little</p> <p>25 bit. So let's go a little bit further down. Stop</p> <p style="text-align: right;">Page 133</p>

<p>1 there. Let's go back up.</p> <p>2 Q. (By Mr. Matthews) So we have a section</p> <p>3 here that says: "Recent Arrests." The first one is</p> <p>4 for December 30th, 2014. Do you remember being</p> <p>5 arrested on December 30th, 2014?</p> <p>6 A. Not that I recall.</p> <p>7 Q. What about on September 14th, 2014?</p> <p>8 A. I don't remember, sir.</p> <p>9 Q. What about on January 2nd, 2013?</p> <p>10 A. No, sir.</p> <p>11 Q. Do you deny that you were arrested on those</p> <p>12 dates, or you just don't remember?</p> <p>13 A. I just don't remember.</p> <p>14 Q. You don't remember anything about those</p> <p>15 experiences at all?</p> <p>16 A. No, sir.</p> <p>17 Q. Is there -- I asked you earlier but again</p> <p>18 have you had any sort of memory issues, Ms. Burk?</p> <p>19 A. No, sir.</p> <p>20 Q. In that period of time were you taking any</p> <p>21 substances that affected your memory?</p> <p>22 A. No, sir.</p> <p>23 Q. I mean, an arrest is a fairly memorable</p> <p>24 event, no?</p> <p>25 MR. KLINGER: Object to the form.</p> <p style="text-align: right;">Page 134</p>	<p>1 conclusion.</p> <p>2 Q. (By Mr. Matthews) But what charge was</p> <p>3 dropped?</p> <p>4 A. Any that you see.</p> <p>5 Q. So you were -- okay. Let me see if I got it</p> <p>6 right. You were charged with hindering the</p> <p>7 apprehension or prosecution of a known felon but that</p> <p>8 charge was later dropped?</p> <p>9 MR. KLINGER: Object to the extent it</p> <p>10 misstates her testimony.</p> <p>11 Q. (By Mr. Matthews) Have I got that right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Yes?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Tell me what happened. Who was the known</p> <p>16 felon?</p> <p>17 A. Somebody I wasn't -- I didn't know. So I</p> <p>18 had nothing to do with that.</p> <p>19 Q. Where did this occur?</p> <p>20 A. What do you mean?</p> <p>21 Q. You were arrested and charged with hindering</p> <p>22 the apprehension, arrest of a felon December 2014?</p> <p>23 A. Sure.</p> <p>24 Q. You were arrested for that, correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 136</p>
<p>1 Q. (By Mr. Matthews) You don't have any</p> <p>2 memory of these three arrests?</p> <p>3 A. No, sir.</p> <p>4 MR. MATTHEWS: Gary, we'll take a screen</p> <p>5 shot of this whole website and send it to you. We'll</p> <p>6 mark it as Exhibit 8 to the deposition.</p> <p>7 (Exhibit 8 marked.)</p> <p>8 MR. MATTHEWS: If we can scroll down little</p> <p>9 bit further under: "Recent Charges."</p> <p>10 Q. (By Mr. Matthews) So December 30, 2014,</p> <p>11 the charge that's listed here is interfering with</p> <p>12 apprehension or prosecution of a known felon. Do</p> <p>13 you remember being charged with that offense?</p> <p>14 A. Huh-uh. I wasn't charge with that.</p> <p>15 Q. So you remember that you were not, correct?</p> <p>16 A. Correct.</p> <p>17 Q. What were you charged with?</p> <p>18 A. Nothing. They dropped it. They were all</p> <p>19 dropped.</p> <p>20 Q. I understand, but there's got to be charge</p> <p>21 before a charge can be dropped, right? So what was</p> <p>22 the charge?</p> <p>23 MR. KLINGER: Object to the extent it calls</p> <p>24 for legal conclusion.</p> <p>25 MR. MATTHEWS: I think that's more of logic</p> <p style="text-align: right;">Page 135</p>	<p>1 Q. And what were the circumstances under which</p> <p>2 you were arrested? What were you --</p> <p>3 MR. KLINGER: Objection.</p> <p>4 A. What do you mean?</p> <p>5 Q. (By Mr. Matthews) I mean, what were you</p> <p>6 doing when you were arrested?</p> <p>7 A. I have -- it's not -- I choose not to</p> <p>8 answer. And it's bogus, so, therefore, they dropped</p> <p>9 the charge.</p> <p>10 Q. I understand. I'm not saying that's why.</p> <p>11 I'm asking. You know, tell me why it was bogus.</p> <p>12 A. Because it had nothing to do with me.</p> <p>13 Q. What were you doing? Why were you arrested?</p> <p>14 A. I was falsely accused for it.</p> <p>15 Q. And why did the police believe that you were</p> <p>16 hindering the apprehension of prosecution of a known</p> <p>17 felon?</p> <p>18 MR. KLINGER: Object to the extent it calls</p> <p>19 for speculation regarding what the police believed.</p> <p>20 Brittany, if you know the answer, you can answer,</p> <p>21 obviously.</p> <p>22 A. I don't know.</p> <p>23 Q. (By Mr. Matthews) Who was the person who</p> <p>24 was the known fellow?</p> <p>25 A. I didn't know that person, or I would have</p> <p style="text-align: right;">Page 137</p>

<p>1 been charged.</p> <p>2 Q. I understand. What was the person's name?</p> <p>3 A. I don't know.</p> <p>4 Q. Did the police just show up at your door one</p> <p>5 day and say we're arresting you for apprehension of an</p> <p>6 unspecified felon?</p> <p>7 A. They had the wrong person.</p> <p>8 Q. I understand. Just explain to me what</p> <p>9 happened.</p> <p>10 MR. KLINGER: Objection to the extent that's</p> <p>11 been answered. I think she said she doesn't recall.</p> <p>12 A. I don't recall, sir.</p> <p>13 MR. MATTHEWS: I'm going to object to the</p> <p>14 speaking objections. And you know that's not what she</p> <p>15 said. She said I'm not going to answer the question.</p> <p>16 She didn't say I don't recall.</p> <p>17 Q. (By Mr. Matthews) So, Ms. Burk, I'm going</p> <p>18 to ask one more time because I don't think -- it's</p> <p>19 been asked. It has not been answered. So what was</p> <p>20 happening that led the police to show up and arrest</p> <p>21 you?</p> <p>22 A. I don't know.</p> <p>23 Q. You don't know who the person was --</p> <p>24 A. No.</p> <p>25 Q. -- the police thought you were involved or</p> <p style="text-align: right;">Page 138</p>	<p>1 Q. All right. How much time did you spend in</p> <p>2 jail before you were released?</p> <p>3 A. I don't remember.</p> <p>4 Q. Do you know if it would have been more than</p> <p>5 a day?</p> <p>6 A. I don't believe so.</p> <p>7 MR. MATTHEWS: Scroll down a bit.</p> <p>8 Q. (By Mr. Matthews) You don't remember</p> <p>9 spending New Year's in jail in 2014?</p> <p>10 A. No, sir.</p> <p>11 Q. Do you deny you did, or you just don't</p> <p>12 remember?</p> <p>13 A. I don't remember.</p> <p>14 Q. So you told me about an arrest in 2011 and</p> <p>15 we have looked here at three different arrests in 2013</p> <p>16 and 2014. So aside from those four, are there any</p> <p>17 other times you've been arrested?</p> <p>18 A. Not that I recall.</p> <p>19 Q. There may have been, you just don't recall?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Thank you. Bear with me just a moment.</p> <p>22 Ms. Burk, those are all my questions. I really thank</p> <p>23 you for your time today and being patient with me, and</p> <p>24 I will pass the witness.</p> <p>25 MR. KLINGER: Thank you. Matt, I just have</p> <p style="text-align: right;">Page 140</p>
<p>1 anything --</p> <p>2 A. No.</p> <p>3 Q. -- that you can explain that?</p> <p>4 MR. KLINGER: Object. Back up here. Object</p> <p>5 to the extent it's been asked and answered and calls</p> <p>6 for speculation, but also I'll just state the ground</p> <p>7 to my objection. I don't mean it to be a, quote,</p> <p>8 speaking objection. I think I've been pretty good</p> <p>9 about that today. I would hope you agree. Ms. Burk,</p> <p>10 answer if you can.</p> <p>11 A. I don't know.</p> <p>12 Q. (By Mr. Matthews) Okay. How much time did</p> <p>13 you spend in jail --</p> <p>14 A. I didn't.</p> <p>15 Q. -- because of that?</p> <p>16 A. I was released immediately.</p> <p>17 Q. Immediately.</p> <p>18 A. Yeah.</p> <p>19 Q. And why?</p> <p>20 A. Like I said earlier, it was not me that they</p> <p>21 were trying to -- I don't know. They had the wrong</p> <p>22 person.</p> <p>23 Q. I understand. What was the name of the</p> <p>24 felon?</p> <p>25 A. I don't know. I didn't know the person.</p> <p style="text-align: right;">Page 139</p>	<p>1 a couple of questions.</p> <p>2 EXAMINATION</p> <p>3 BY MR. KLINGER:</p> <p>4 Q. Ms. Burk, do you recall receiving discovery</p> <p>5 requests in this case which required you to produce</p> <p>6 documents?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And at the time we sent those -- your</p> <p>9 lawyers, me and Daniel sent those requests to you, do</p> <p>10 you recall looking for documents responsive to each of</p> <p>11 those requests?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And did you search everywhere within your</p> <p>14 power to find these documents; including your</p> <p>15 computer, and your cell phone at the time?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did you produce everything in your</p> <p>18 possession that you would have been able to access and</p> <p>19 produce at that time?</p> <p>20 A. Yes, sir.</p> <p>21 Q. If your dad's laptop was around, would you</p> <p>22 have searched that as well and produced anything that</p> <p>23 you believed was relevant on there if there was</p> <p>24 anything?</p> <p>25 A. Yes, sir.</p> <p style="text-align: right;">Page 141</p>

<p>1 Q. And is it because -- you know that was like 2 two years ago. Is it because of the time frame that 3 you don't remember the precise details of everything? 4 A. Yes, sir. 5 MR. MATTHEWS: Objection, leading. 6 MR. KLINGER: I'm sorry, Matt? 7 MR. MATTHEWS: A leading objection is what I 8 said. 9 Q. (By Mr. Klinger) Ms. Burk, did you use 10 your dad's laptop at the time that you received the 11 calls in question? 12 A. No, sir. 13 Q. We talked about a number of -- well, strike 14 that. 15 Mr. Matthews put on a -- what 16 appeared to be a screen shot of an Internet website 17 that pertained to some possible arrests. Do you 18 recall? 19 A. Yes, sir. 20 Q. Were you confused about the meaning of 21 arrest and conviction when we were talking about that 22 earlier today? 23 A. Yes, sir. 24 MR. MATTHEWS: Objection, leading. 25 Q. (By Mr. Klinger) Just to be clear, is that</p> <p style="text-align: right;">Page 142</p>	<p>1 A. Yes. 2 Q. In what way? 3 A. I just feel really bad and my face is 4 flushed right now. I checked it on break, and it was 5 through the roof. 6 Q. I'm sorry to hear that. Let me see if I 7 have anything else here. 8 MR. KLINGER: I've got nothing further. 9 Thank you. 10 FURTHER EXAMINATION 11 BY MR. MATTHEWS: 12 Q. Ms. Burk, congratulations, also. I did not 13 know you were pregnant, but I do feel like I should 14 follow-up. I asked you if you were taking any 15 medications or anything like that that would affect 16 your ability to understand my questions. Have your 17 physical conditions, your pregnancy and physical 18 things that you've been experiencing today impacted 19 your ability to understand my questions? 20 A. No, not really. 21 Q. Has it impacted your memory? 22 MR. KLINGER: Objection, form. 23 A. I'm not sure. 24 Q. (By Mr. Matthews) You're not sure? 25 A. Huh-uh.</p> <p style="text-align: right;">Page 144</p>
<p>1 why you said you only had the one arrest because you 2 weren't clear as to conviction and arrest? 3 MR. MATTHEWS: Objection, leading. 4 Q. (By Mr. Klinger) You can answer. 5 A. Yes, sir. 6 Q. Ms. Burk, we haven't discussed this today it 7 hasn't come up; but I wanted to ask you this. Are you 8 pregnant right now? 9 A. Yes, sir. 10 Q. Congratulations on that. And is that why 11 you're not feeling well right now? 12 A. Yes, sir. 13 MR. MATTHEWS: Objection, leading. 14 Q. (By Mr. Klinger) Is that why you've been a 15 little lethargic during this deposition? 16 A. Yes, sir. 17 MR. KLINGER: Same objection. I'm sorry, 18 court reporter did you get both of those? 19 THE COURT REPORTER.: Yes. 20 Q. (By Mr. Klinger) Ms. Burk, I'm sorry, what 21 was your -- what was your response? 22 A. Yes, sir. My blood pressure has been really 23 high for this, sorry. 24 Q. Has that affected you in any manner during 25 this deposition?</p> <p style="text-align: right;">Page 143</p>	<p>1 Q. (By Mr. Matthews) I have no further 2 questions at this time. Thank you, Ms. Burk. 3 MR. KLINGER: Thank you, Matt, as well. 4 Thank you, Ms. Burk. And of course to the esteemed 5 court reporter, thank you as well. We will reserve 6 signature. So you can send that however -- I imagine 7 you're ordering, Matt? 8 MR. MATTHEWS: Yeah. 9 MR. KLINGER: We'll take a copy of it. 10 Electronic copy, I should have clarified, Etran. 11 (Deposition concluded 2:04 p.m.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 145</p>

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<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: BRITTANY BURK</p> <p>3 DATE OF DEPOSITION: November 17, 2020</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p> <p style="text-align: right;">Page 146</p>	<p>1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS</p> <p>2 HOUSTON DIVISION</p> <p>3 BRITTANY BURK, on behalf of) herself and others similarly)</p> <p>4 situated) Plaintiffs,) Cause No.:</p> <p>5 4:19-cv-00663)</p> <p>6 vs.)</p> <p>7 DIRECT ENERGY, LP,) Defendant.)</p> <p>8</p> <p>9 REPORTER'S CERTIFICATION FOR THE</p> <p>10 ORAL ZOOM DEPOSITION OF BRITTANY BURK</p> <p>11 NOVEMBER 17, 2020</p> <p>12 I, Jill M. Vaughan, Certified Shorthand</p> <p>13 Reporter in and for the State of Texas, hereby</p> <p>14 certify pursuant to the Federal Rules and/or</p> <p>15 agreement of the parties present to the following:</p> <p>16 That the witness, BRITTANY BURK, was duly sworn</p> <p>17 by the officer and that the transcript of the oral</p> <p>18 deposition is a true record of the testimony given</p> <p>19 by the witness;</p> <p>20 That the deposition transcript was duly</p> <p>21 submitted on _____ to the witness or to</p> <p>22 the attorney for the witness for examination,</p> <p>23 signature, and return to Veritext by</p> <p>24 _____.</p> <p>25 I further certify that I am neither counsel</p> <p style="text-align: right;">Page 148</p>
<p>1</p> <p>2 I, _____, do hereby certify</p> <p>3 that I have read the foregoing pages, and that the</p> <p>4 same is a correct transcription of the answers given</p> <p>5 by me to the questions therein propounded, except</p> <p>6 for the corrections or changes in form or substance,</p> <p>7 if any, noted in the attached Errata Sheet.</p> <p>8</p> <p>9 _____</p> <p>10 WITNESS SIGNATURE DATE</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 147</p>	<p>1 for, related to, nor employed by any of the parties</p> <p>2 in the action in which this proceeding was taken,</p> <p>3 and further that I am not financially or otherwise</p> <p>4 interested in the outcome of this action.</p> <p>5 Certified to by me on this 25th day of</p> <p>6 November 2020</p> <p>7 <u>Jill M. Vaughan</u></p> <p>8 JILL M. VAUGHAN, CSR, RPR</p> <p>9 CSR No. 6192</p> <p>10 Expiration date: 12-31-21</p> <p>11 Veritext Legal Solutions</p> <p>12 Veritext Registration No. 571</p> <p>13 300 Throckmorton Street, Suite 1600</p> <p>14 Fort Worth, TX 76102</p> <p>15 (817) 336-3042 (800) 336-4000</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 149</p>

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1 gklinger@masonllp.com

2 November 25, 2020

3 RE: Burk, Brittany, Et Al v. Direct Energy, LP

4 DEPOSITION OF: Brittany Burk (# 4336646)

5 The above-referenced witness transcript is

6 available for read and sign.

7 Within the applicable timeframe, the witness

8 should read the testimony to verify its accuracy. If

9 there are any changes, the witness should note those

10 on the attached Errata Sheet.

11 The witness should sign and notarize the

12 attached Errata pages and return to Veritext at

13 errata-tx@veritext.com.

14 According to applicable rules or agreements, if

15 the witness fails to do so within the time allotted,

16 a certified copy of the transcript may be used as if

17 signed.

18 Yours,

19 Veritext Legal Solutions

20

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22

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24

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346-293-7000

A0017

EXHIBIT 1-C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Case No. 4:19-cv-00663

BRITTANY BURK, et al.

Plaintiff,

v.

DIRECT ENERGY, LP,

Defendant.

_____ /

DEPOSITION OF: Andrew Dorko
DATE TAKEN: February 23rd, 2021
TIME: 1:50 p.m. - 3:32 p.m.
PLACE: Conducted Via Videoconference
TAKEN BY: The Defendant
REPORTED BY: Jenny Marmol
Court Reporter, Notary Public,
State of Florida

<p>1 APPEARANCES</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4 Lief Cabraser Heimann & Bernstein</p> <p>5 Daniel Hutchinson, Esquire</p> <p>6 dhutchinson@lchb.com</p> <p>7 Evan Ballan, Esquire</p> <p>8 275 Battery Street, 29th Floor</p> <p>9 San Francisco, CA 94111</p> <p>10 (415) 956-1000</p> <p>11 On behalf of Defendant:</p> <p>12 McDowell Hetherington LLP</p> <p>13 William B. Thomas, Esquire</p> <p>14 william.thomas@mhlhp.com</p> <p>15 Elizabeth Wroblewski, Esquire</p> <p>16 1001 Fannin St., Ste. 2700</p> <p>17 Houston, Texas 77002</p> <p>18 (713) 337-5580</p> <p>19 On behalf of Andrew Dorko:</p> <p>20 MICHAEL A. ABRAMSON, ATTORNEY AT LAW</p> <p>21 Michael A. Abramson</p> <p>22 Maabramson@abramson.com</p> <p>23 180 North LaSalle Street, Suite 3300</p> <p>24 Chicago, IL 60601</p> <p>25 (312) 754-7400</p> <p>Also present: Todd Davis, Videographer</p> <p>Page 2</p>	<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: This is the video</p> <p>3 deposition of Andrew Dorko, on February 23rd,</p> <p>4 '21, at the time indicated on the video</p> <p>5 screen, which is 1:50 p.m. This is taken</p> <p>6 remotely via Zoom, with all parties in</p> <p>7 agreement. Full introduction has been waived.</p> <p>8 Court Reporter, please swear in the</p> <p>9 witness and counsel introduce themselves.</p> <p>10 THE COURT REPORTER: Sir, would you please</p> <p>11 raise your right hand to be sworn?</p> <p>12 Do you solemnly swear or affirm that the</p> <p>13 testimony you're about to give will be the</p> <p>14 truth, the whole truth, and nothing but the</p> <p>15 truth?</p> <p>16 THE WITNESS: I do.</p> <p>17 ANDREW DORKO, having first been duly</p> <p>18 sworn, testified as follows:</p> <p>19 DIRECT EXAMINATION</p> <p>20 BY MR. THOMAS:</p> <p>21 Q. Good afternoon, Mr. Dorko.</p> <p>22 My name is Will Thomas.</p> <p>23 I'm an attorney with Direct Energy.</p> <p>24 I appreciate you being with us today and</p> <p>25 overcoming some early logistical challenges to join</p> <p>Page 4</p>
<p>1 INDEX</p> <p>2 TESTIMONY OF ANDREW DORKO</p> <p>3 Direct Examination by Mr. Thomas 4</p> <p>4 Cross-Examination by Mr. Hutchinson 67</p> <p>5 Redirect Examination by Mr. Thomas 77</p> <p>6 CERTIFICATE OF OATH 80</p> <p>7 CERTIFICATE OF REPORTER 81</p> <p>8</p> <p>9</p> <p>10 * * * * *</p> <p>11 EXHIBITS</p> <p>12 Exhibit 11 Motion 38</p> <p>13 Exhibit 12 Bates-Labeled 00121205 44</p> <p>14</p> <p>15</p> <p>16 * * * * *</p> <p>17 STIPULATIONS</p> <p>18 It is hereby agreed and so stipulated</p> <p>19 by and between the parties hereto, through</p> <p>20 their respective counsel, that the reading and</p> <p>21 signing of the transcript are expressly</p> <p>22 reserved by the Deponent.</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 3</p>	<p>1 via Zoom.</p> <p>2 Mr. Dorko, you understand that you're</p> <p>3 under oath today, correct, sir?</p> <p>4 A. I'm sorry. Did I lose everybody?</p> <p>5 Q. Well, I can hear you.</p> <p>6 A. Okay. I couldn't hear anyone.</p> <p>7 Q. Okay. Mr. Dorko, you understand that</p> <p>8 you're under oath today, correct, sir?</p> <p>9 A. I do.</p> <p>10 Q. Okay. And today's proceeding is no</p> <p>11 different than if we were in downtown Houston in</p> <p>12 the courtroom in front of the judge and jury. Do</p> <p>13 you understand that, sir?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Okay. And Mr. Dorko, we previously took</p> <p>16 your deposition back in November. I'm going to go</p> <p>17 ahead and just kind of refresh your memory on some</p> <p>18 of the rules that will make this move a little bit</p> <p>19 quick and easier on the court reporter, if that's</p> <p>20 okay.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. Today, you know, it's a bit of an</p> <p>23 unnatural proceeding. The court reporter can only</p> <p>24 take down one person talking at a time. So I will</p> <p>25 do my best not to talk over you, sir, and if you</p> <p>Page 5</p>

<p>1 A. That's correct. 2 MR. HUTCHINSON: Object to form. 3 BY MR. THOMAS: 4 Q. Mr. Dorko, after the deposition in 5 November, I believe it was either the next day or 6 two days later that TMC declared bankruptcy; is 7 that accurate? 8 A. That's correct. 9 Q. Okay. You instructed your counsel to file 10 bankruptcy for TMC? 11 A. Correct. 12 Q. Okay. And what is the current status of 13 TMC involving the bankruptcy? 14 A. It's a Chapter 7. 15 Q. The bankruptcy is still ongoing? 16 A. Yes. 17 Q. Okay. 18 A. It's officially a Chapter 7. 19 Q. What is it that you're hoping to achieve 20 through the bankruptcy? 21 A. Quite frankly, it really wasn't my choice. 22 We had a lender that pushed it to the bankruptcy. 23 I was looking to hang on to TMC, put it into 24 Chapter 11 to reorganize and actually continue 25 running the company with Chris Bonaviti, who's been</p> <p style="text-align: right;">Page 10</p>	<p>1 want to spell it incorrectly. Okay. 2 B-o-n-a-v-i-t-i. 3 Q. Okay. Thank you, sir. So there's no one 4 at the physical location of TMC right now; is that 5 accurate? 6 A. No, sir, the keys were turned over to the 7 trustee. 8 Q. Okay. So the trustee is actually in 9 possession and in control of TMC's -- 10 A. Assets. 11 Q. -- headquarters? 12 A. Yes, correct. 13 Q. Okay. And who is the trustee? 14 A. Emerson Noble. 15 Q. And to your knowledge, I mean, there's no 16 telemarketing operations going on right now, is 17 there? 18 A. No, there's not. 19 Q. Okay. The TMC is not providing any 20 services to any of its customers or clients right 21 now, correct, sir? 22 A. It's completely shut down, that's correct. 23 Q. Okay. And Mr. Dorko, I understand that 24 November of 2020 sort of isn't the first time that 25 yourself or TMC had issues with the lender; is that</p> <p style="text-align: right;">Page 12</p>
<p>1 the president of the company since April of last 2 year, but they didn't give us the opportunity to do 3 that. The lender put writs on all of our accounts, 4 wanted his money back and pushed us into Chapter 7. 5 Wasn't by our choice. 6 Q. Who is the -- who is the lender? 7 A. Big Elk Funding out of Arizona. 8 Q. Mr. Dorko, what is the state of TMC today? 9 A. It's in Chapter 7. 10 Q. Okay. Is -- is the business still 11 running? 12 A. No. 13 Q. Okay. 14 A. It's -- we've been closed since 15 December 1st. 16 Q. Are there any employees on the payroll? 17 A. No, there's no -- there's no money. 18 Q. You mentioned someone earlier who was the 19 president since April, Chris, what was his last 20 name? 21 A. Bonaviti. 22 Q. Can you spell that for me? 23 A. I can. Hold on. I turned my phone off 24 because it interrupts our -- our conversations if 25 somebody calls me. I know it's B-o-n -- I don't</p> <p style="text-align: right;">Page 11</p>	<p>1 correct? 2 A. That's correct. 3 Q. It's sort of an ongoing dispute between 4 TMC and Big Elk? 5 A. Yes, correct. 6 Q. Okay. And when did that dispute begin? 7 A. About the end of 2018. Third quarter. 8 Q. And what happened? 9 A. Well, it's a long story. I can -- I can 10 start to tell it. I had a -- I took a sabbatical 11 in 2015 and turned it over to a gentleman that 12 worked for me, a president since 2008 or '9, George 13 Lonabaugh. And unbeknownst to me, trusting him, he 14 misused funds, pretty much ruined TMC. And in 2016 15 we took a \$4 million loan from Big Elk Funding, and 16 we paid the payments, we paid them about 17 \$1.2 million in interest over a period of '16 and 18 '17 into '18. And then in '18, we found out that 19 George had -- George Lonabaugh had been farming 20 business out to vendors, not paying them and 21 increased salaries to certain people, individuals 22 of the company, extreme -- extreme salaries. And 23 at that point, we couldn't pay Big Elk back and it 24 forced a -- forced a conflict. 25 We had some cooperation with them for the</p> <p style="text-align: right;">Page 13</p>

<p>1 July of 2019, TMC is dealing with Big Elk and its 2 demands? 3 A. Correct, right. 4 Q. It's dealing with a receivership and its 5 control? 6 A. Right. 7 Q. George, at some point, the president 8 leaves the company because he's engaged in self 9 dealing and he takes the head of IT with him which 10 was Tyson Chavarie, correct? 11 A. Correct, correct. 12 Q. Okay. And all of those issues, you would 13 agree with me, sir, affected normal business 14 operations, correct? 15 A. All -- 16 MR. HUTCHINSON: Objection as to form. 17 BY MR. THOMAS: 18 Q. I'm sorry, I'm sorry. I didn't -- I 19 didn't hear you, Mr. Dorko. 20 A. Yes, it started with George Lonabaugh and 21 just continued to disintegrate the company or 22 depreciate the company with Big Elk coming in. 23 Q. Okay. And the issues that you're talking 24 about, these are business management issues, not 25 telemarketing compliance issues, correct?</p> <p style="text-align: right;">Page 18</p>	<p>1 Q. Because there's no one there, right? 2 A. That's correct. 3 Q. Okay. And right now you don't even know 4 where the records are being maintained, do you? 5 A. No, I don't. 6 Q. Okay. Is -- is Patrick Crocker still 7 retained by the company? 8 A. No, no one is. 9 Q. Okay. When was the last time that Patrick 10 Crocker was performing work for TMC under his 11 retention? 12 A. Probably in I'd have to say November. 13 Q. November of 2020? 14 A. 2020, yes, 2020 November. 15 Q. Okay. But even I guess before the 16 bankruptcy, there was still ongoing sort of 17 business interruption issues over at TMC, right? 18 A. Oh, yeah. 19 MR. HUTCHINSON: Objection as to form. 20 Asked and answered. 21 BY MR. THOMAS: 22 Q. Okay. And if we wanted to know about how 23 the business was operating back in 2018, 2019, 24 George Lonabaugh would be the person who would have 25 the most knowledge about those operations, right?</p> <p style="text-align: right;">Page 20</p>
<p>1 A. Correct. 2 MR. HUTCHINSON: Objection as to form. 3 BY MR. THOMAS: 4 Q. Okay. 5 THE COURT REPORTER: I just want to make 6 sure -- 7 BY MR. THOMAS: 8 Q. This is how the business is being run. 9 THE COURT REPORTER: I just want to make 10 sure that that is Mr. Hutchinson objecting. 11 MR. HUTCHINSON: Correct. 12 THE COURT REPORTER: Thank you. 13 BY MR. THOMAS: 14 Q. These are issues as to how the business 15 itself is operating, correct? 16 A. Correct. 17 Q. Okay. And so because the lights are all 18 turned off at TMC, it's not as if right now Direct 19 Energy or any of your current or previous clients 20 can just pick up the phone and call and say, hey, 21 can you provide these records over to us; is that 22 correct? 23 A. That's correct. 24 MR. HUTCHINSON: Objection as to form. 25 BY MR. THOMAS:</p> <p style="text-align: right;">Page 19</p>	<p>1 A. That's correct. 2 Q. Okay. And as it relates -- 3 A. In the beginning -- in the beginning of 4 '19, up to April -- 5 Q. Okay. Fair enough. 6 A. -- or July or whatever. 7 Q. Fair enough. And that's back when Direct 8 Energy was still doing business with TMC, correct? 9 A. I'm not sure exactly when Direct Energy -- 10 yeah, they were doing business in '18, correct, I'm 11 pretty sure. 12 Q. Okay. And in '19 too, correct? 13 A. I believe so, yes. 14 Q. Right. And so that would have been 15 probably the -- the time that, you know, TMC would 16 be best situated to be able to provide records over 17 to Direct Energy, right? 18 A. Correct. 19 MR. HUTCHINSON: Objection. Calls for 20 speculation. 21 BY MR. THOMAS: 22 Q. Right. And they would be able to provide 23 those records because George was still there, 24 right? 25 MR. HUTCHINSON: Same objection. Calls</p> <p style="text-align: right;">Page 21</p>

<p>1 for the witness to speculate. 2 MR. THOMAS: As to whether or not George 3 was there? 4 BY MR. THOMAS: 5 Q. Mr. Dorko? 6 A. Yes. 7 Q. TMC would have been better situated to 8 provide records to Direct Energy back in early 2019 9 for several reasons, correct, sir? 10 MR. HUTCHINSON: Objection, same 11 objection. 12 BY MR. THOMAS: 13 Q. You can answer, Mr. Dorko. 14 A. Yeah, I'm not even sure if, you know, the 15 truth is, I don't know. That's -- I don't know 16 because I really -- I wasn't there. 17 Q. Right. But let's talk about a couple of 18 things. 19 A. Okay. 20 Q. You know that George Lonabaugh was still 21 there, correct? 22 A. Yes, correct. 23 Q. And you know that Tyson Chavarie was still 24 there, correct? 25 A. That's correct, yes.</p> <p style="text-align: right;">Page 22</p>	<p>1 Q. Okay. Just ball park for me. 2 A. 3, 400. 3 Q. Okay. And what industries did TMC 4 telemarket for? 5 A. We did -- I don't know all of them a 6 hundred percent, but I know we did a -- we did, of 7 course, Direct Energy. We did -- we were doing 8 Sirius Radio. We were doing a company called UMG, 9 which is some sort of subscription program and some 10 sort of a telecom voiceover IT program that I 11 remember. 12 Q. Do you recall if Verizon was a customer? 13 A. Verizon was a customer prior to Sirius 14 Radio. 15 Q. Okay. Those are both pretty big 16 companies, right? 17 A. Yes, correct. 18 Q. Those were pretty big accounts for TMC, 19 right? 20 A. They were. 21 Q. Okay. And I understand that TMC also had 22 a bit of an energy focus; is that fair to say? 23 A. Yes, absolutely. In fact, that's when I 24 started with the company with energy. 25 Q. Okay. And some of the clients that TMC</p> <p style="text-align: right;">Page 24</p>
<p>1 Q. Okay. And you know that there was still a 2 contractual relationship between TMC and Direct 3 Energy at that time, correct? 4 A. Correct. 5 Q. Okay. And then at some point a receiver 6 came in and took over the company and disrupted the 7 business, correct? 8 A. Correct, correct. 9 Q. Okay. And then TMC has declared 10 bankruptcy, correct? 11 A. Correct. 12 Q. And now the lights aren't even on, 13 correct? 14 A. Correct. 15 Q. If my client picks up the phone and says, 16 will someone at TMC please provide us these 17 records, there's no one there to even take the 18 call, correct? 19 A. That's correct. 20 Q. Okay. Thank you, sir. 21 A. You're welcome. 22 Q. Back in 2018 and 2019, how many employees 23 did TMC employ? 24 A. If you're looking for an accurate number, 25 I don't know the accurate number.</p> <p style="text-align: right;">Page 23</p>	<p>1 has had -- I mean, in addition to Direct Energy is, 2 like, Spark Energy, right? 3 A. Yes. 4 Q. Just Energy, right? 5 A. I don't know for sure. 6 Q. Okay. USG&E? 7 A. Yes, for sure. 8 Q. Santana Energy Services? 9 A. Absolutely. 10 Q. Okay. Clearview Energy, right? 11 A. That, I don't know. 12 Q. Okay. But again, those are also pretty 13 big companies, right, sir? 14 A. Absolutely. 15 Q. Important accounts for TMC? 16 A. They were. 17 Q. Okay. Direct Energy -- in other words, 18 Direct Energy was not the only energy customer that 19 TMC had, right? 20 A. That's correct. 21 Q. And TMC at no point during Direct Energy's 22 relationship with it, was TMC a captive agent, 23 correct, sir? 24 A. No. 25 Q. Okay. No, I'm not correct or no --</p> <p style="text-align: right;">Page 25</p>

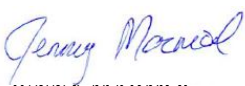
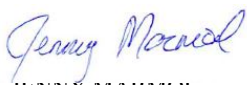
<p>1 Thursday?</p> <p>2 THE COURT REPORTER: I'll do my best.</p> <p>3 MR. THOMAS: And then if I can just get</p> <p>4 a -- I mean, if I can get rough too, if you</p> <p>5 can't do that, then that would be ideal. We</p> <p>6 have some filings due Friday.</p> <p>7 THE COURT REPORTER: Okay. Do you need a</p> <p>8 copy, Mr. Hutchinson?</p> <p>9 MR. HUTCHINSON: Yes, I would like a copy.</p> <p>10 I don't know that we're going to need it</p> <p>11 rushed, though.</p> <p>12 THE COURT REPORTER: Okay. Mr. Abramson?</p> <p>13 MR. ABRAMSON: I do not need a copy.</p> <p>14 THE COURT REPORTER: Okay. Is there</p> <p>15 anybody -- and that's it for this, right?</p> <p>16 MR. THOMAS: Yes, ma'am.</p> <p>17 THE COURT REPORTER: Okay.</p> <p>18 MR. HUTCHINSON: Just -- one, just for</p> <p>19 Will, I recall that when we were doing this</p> <p>20 the last time around, the judge had said that</p> <p>21 he did not mind if the deposition went in</p> <p>22 without sort of all the bells and whistles.</p> <p>23 And so I assume that the same would hold here.</p> <p>24 Just for your knowledge. We're not -- we</p> <p>25 won't have an objection if you put in a rough</p> <p style="text-align: right;">Page 78</p>	<p>1 CERTIFICATE OF OATH</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF ORANGE</p> <p>4</p> <p>5 I, JENNY MARMOL, Shorthand Reporter</p> <p>6 and Notary Public, State of Florida, certify that</p> <p>7 ANDREW DORKO, appeared before me, via</p> <p>8 videoconference, on 2/23/2024, and was duly</p> <p>9 sworn/affirmed and produced a Florida driver's</p> <p>10 license as identification.</p> <p>11 WITNESS my hand and official seal</p> <p>12 this 25th day of February, 2021.</p> <p>13</p> <p>14 </p> <p>15 JENNY MARMOL</p> <p>16 Notary Public - State of</p> <p>17 Florida</p> <p>18 Commission No. HH 38979</p> <p>19 Expires: 9/2/2024</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 80</p>
<p>1 or you need to put in something that's not a</p> <p>2 hundred percent complete and we can get the</p> <p>3 final one in at some later date. Just wanted</p> <p>4 to know so you didn't get jammed up in any</p> <p>5 fashion unnecessarily.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 79</p>	<p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF ORANGE</p> <p>4</p> <p>5 I, JENNY MARMOL, Shorthand Reporter and</p> <p>6 Notary Public, CERTIFY that I was authorized to and</p> <p>7 did stenographically report the deposition of</p> <p>8 ANDREW DORKO; that a review of the transcript was</p> <p>9 requested: and that the foregoing transcript,</p> <p>10 Pages 4 through 79, is a true and accurate record</p> <p>11 of my stenographic notes.</p> <p>12 I FURTHER CERTIFY that I am not a</p> <p>13 relative, or employee, or attorney, or counsel of</p> <p>14 any of the parties, nor am I a relative or employee</p> <p>15 of any of the parties' attorneys or counsel</p> <p>16 connected with the action, nor am I financially</p> <p>17 interested in the action.</p> <p>18 DATED this 25th day of February, 2021.</p> <p>19</p> <p>20</p> <p>21 </p> <p>22 JENNY MARMOL</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 81</p>

EXHIBIT 1-D

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 BRITTANY BURK,

5 Plaintiff,

6 VS.

7 DIRECT ENERGY, LP,

8 Defendant.

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. Civil Action
. No. H-19-CV-663
.
. Houston, Texas
. December 9, 2020
. 10:56 a.m.

10 TRANSCRIPT OF PROCEEDINGS (HELD REMOTELY)

11 BEFORE THE HONORABLE GEORGE C. HANKS, JR.

12 PRE-MOTION CONFERENCE

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24 PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS REMOTELY,
25 TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

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1 PROCEEDINGS

2 December 9, 2020

3 THE COURT: Good morning, everyone. The next case on
4 the Court's docket is Cause Number 4:19-CV-663, Burk versus
10:56:18 5 Direct Energy.

6 Can counsel on the line just introduce themselves
7 to the Court and state the parties they represent starting with
8 the Plaintiffs.

9 MR. HUTCHINSON: Yes. Good morning, your Honor. This
10:56:27 10 is Daniel Hutchinson of Lieff, Cabraser for the Plaintiff. My
11 colleague Evan Ballan, also Lieff, Cabraser, is on my line, as
12 is my colleague Gary Klinger.

13 THE COURT: Okay. Welcome, everyone.

14 And for the Defendant?

10:56:41 15 MR. MATTHEWS: Good morning, your Honor. This is Matt
16 Matthews for the Defendant, Direct Energy.

17 THE COURT: Great.

18 Welcome, everyone. I received the request for
19 pre-motion letter, the pre-motion request letter; and I've read
10:56:52 20 all the attachments. I've read all of the arguments. And
21 here's the problem that I have with this case and what's going
22 on here, and I just wanted to be perfectly candid with you-all.

23 I mean, I've -- the problem is is that the
24 deadline for amending the pleadings and adding parties has
10:57:14 25 passed; and from reading all the materials under Rules 15 and

1 16, there's no good cause to amend the complaint to add an
2 additional Plaintiff at this point in time.

3 I read the arguments regarding what Defendants
4 allegedly did. Respectfully, Mr. Hutchinson, I completely
10:57:35 5 disagree. There is no sandbagging here. It's your Plaintiff.
6 You either know or should know your Plaintiff's qualifications
7 to be class representatives.

8 It wasn't Mr. Matthews' or the Defendant's
9 responsibility to tell you that. You should have been telling
10:57:50 10 them about the Plaintiff's qualifications to serve as a class
11 representative in this case. So, I mean, obviously, you can
12 file your motion; and you need to file it under Rules 15 and 16,
13 which is what governs here.

14 Rules 15 and 16 govern the amendment of the
10:58:13 15 docket control order to add parties. That date has passed, and
16 you have to show good cause. In looking at this, there is no
17 good cause for amending the complaint at this time. Good cause
18 under Rule 15 is not -- it's not -- it's good cause, excusable
19 -- it's got to be not a mistake, and it's got to be excusable
10:58:38 20 neglect.

21 And in this case, I don't see how there's
22 excusable neglect. I mean, you can file the motion, no
23 question; but I don't see how there's excusable neglect because
24 it's your Plaintiff. You know what her qualifications are or
10:58:52 25 not.

1 So, I'll listen to argument today, you know,
2 about the issue.

3 But I really think that, Mr. Hutchinson, you need
4 to go ahead and file your motion.

10:59:01 5 Mr. Matthews, you get to respond to it.

6 But honestly, if this is everything that you guys
7 are going to present to me, there's no sandbagging by the
8 Defendants; and the Plaintiff -- it's your Plaintiff. You know,
9 it's sort of like you dance with who you brought -- who you
10 brought to the dance.

11 I mean, this is your Plaintiff. You understand
12 her -- her assets and liabilities as a -- for a class
13 representative; and the other class representative you're
14 thinking about joining at this point, this isn't somebody who
10:59:39 15 just popped up. Everybody knows about Ms. Young. She could
16 have been added at any time if you thought that the current
17 Plaintiff wasn't appropriate.

18 So, I'll hear from the parties; but I think the
19 motion needs to be filed; and we need to hear why under Rule 15
10:59:57 20 and 16 the docket control order should be amended.

21 And anyone can speak.

22 Mr. Matthews.

23 Mr. Hutchinson.

24 I mean, am I --

11:00:08 25 MR. HUTCHINSON: Yes, your Honor. Yes, your Honor.

1 If I may be heard briefly, your Honor, on those topics. So, we
2 agree that the questions are, one, should the Plaintiff be
3 permitted to add or substitute another class representative?
4 And two, if so, what is the timing of that?

11:00:26 5 And so, I can briefly address the first issue,
6 should the Plaintiff be allowed to move for this relief. And I
7 would like to unpack the second issue just a little bit because
8 that's something that the Defendant had brought up that we
9 haven't yet addressed in our papers.

11:00:41 10 So, as to the baseline issue, as we cited to a
11 few cases in our papers -- and we can flesh this out more fully
12 if we -- when we file the motion. It's quite common for class
13 representatives to be replaced at various stages of litigation.
14 As you can imagine, people get deployed for the armed services.
11:01:02 15 People may die. They may become ill. They may have to take
16 care of someone else. There's a whole host of ranges -- a range
17 of reasons why someone may no longer be able to proceed as a
18 class representative.

19 And Courts frequently find that the most
11:01:17 20 efficient way to deal with that is to have a substitute
21 Plaintiff. The alternative to that is that the new person could
22 just go ahead and file another case.

23 And here, Ms. Young could file another case at
24 any time. We think that would be far less efficient than
11:01:33 25 proceeding in the same case where the parties have already done

1 -- I've got a little experience with this. Rule 21 -- when
2 you're substituting class Plaintiffs -- class representatives
3 under Rule 21, it's really in a situation where a class member
4 is -- the class representative is no longer able, for whatever
11:12:25 5 reason, to serve as a class representative, not that they're no
6 longer suited to be a class representative or never were suited
7 to be a class representative.

8 So, I need to hear the -- I mean, I need to hear
9 the evidence. I need to get the briefing on that. So, with all
11:12:42 10 due respect to everyone's position, I'm not staying anything.
11 Everything is before me. The parties respond. If you want a
12 motion to substitute the -- a new Plaintiff, you can file that.

13 It needs to be responded to, and I'll consider --
14 once the motions are all before me, I'll figure out which one I
11:13:02 15 need to decide first and move forward from there.

16 I understand the efficiency argument,
17 Mr. Matthews; but that is an argument that is in response to the
18 motion to -- to add a new party, that is, "Judge, you have a
19 docket control order in place. We started briefing this.
11:13:23 20 Plaintiff wanted to brief it. You know, it's inefficient use of
21 resources at this point to add a new Plaintiff."

22 You can make all those arguments if you want to
23 in your response. I know that it seems inefficient, but I don't
24 know a better way to do it that's fair to both sides.

11:13:37 25 So, Mr. Hutchinson, you file whatever motions you

1 THE COURT: Great. Okay. Well, I'll let you go.

2 Thanks --

3 I'm sorry. Mr. Matthews.

4 MR. MATTHEWS: Sorry. One other question I almost
11:20:47 5 forgot. It's mentioned in our letter response that -- the fact
6 that Ms. Burk refused to answer some questions about her
7 criminal history; and if we are going to be going forward with
8 briefing on Ms. Burk as the class representative, I would like
9 an opportunity to agree to depose her on just those issues.

11:21:03 10 THE COURT REPORTER: I'm sorry, you faded out again.

11 MR. MATTHEWS: I'm sorry, I'm too far away.

12 I cautioned her during the deposition that, if
13 she didn't answer those questions, that I would ask for
14 permission to redepose her. We took a break. We came back,
11:21:26 15 asked more questions, cautioned her again. She still refused to
16 answer. She said, "I'll do it if the judge says I have to."

17 So, I'm requesting a chance -- these issues
18 certainly go to her adequacy, and she refused to provide answers
19 on some of these matters. So, I don't think it would take more
11:21:45 20 than -- much time at all. We can do it by Zoom again. I'm not
21 asking for her to pay for it or anything like that --

22 THE COURT REPORTER: I'm sorry, you're not asking for
23 what?

24 MR. MATTHEWS: For her to pay for it, you know, or any
11:21:57 25 sort of sanction. But I think these -- we can all agree these

1 are relevant issues or we wouldn't be having this discussion,
2 and I would like the chance to ask her those questions.

3 THE COURT: Mr. Hutchinson, your position.

4 If you're going to be moving to substitute her --
11:22:19 5 possibly substitute her as class representative, the Defendants
6 need the opportunity to depose her and find out whether or not
7 she's suited.

8 MR. HUTCHINSON: We would agree to that. Without
9 knowing the questions, I can't speak to the specific questions;
11:22:33 10 but by way of background and without saying anything that's
11 attorney-client privilege, this was an area of surprise for
12 counsel and an area that I understand of potential embarrassment
13 for the Plaintiff.

14 And so, it was unexpected at the time. We have
11:22:51 15 no objection, though, to answering those questions now that we
16 understand the issues; and we can speak to Ms. Burk. As long as
17 there's not -- they go beyond the pale that I'm not aware of, we
18 have no objection to having the deposition be completed in that
19 fashion. Thank you, your Honor.

11:23:07 20 THE COURT: So, Mr. Matthews, if you can set that up.
21 If there's a problem, let me know. I'll stand by; and if you
22 think there's going to be a problem, let me know ahead of time
23 when the deposition is; and I'll stand by, you know, on Zoom.

24 Just -- actually, why don't you just -- just
11:23:25 25 prophylactic -- I know that it's going to be fine -- why don't

1 you provide Ms. Clair who is my case manager the Zoom
2 information for the deposition; and that way, I'll have it. And
3 all you need to do, if there's a problem, is shoot Ms. Clair an
4 e-mail and say, "We're having a problem. Judge, can you check
11:23:48 5 in for a second." I will be happy to do that.

6 I'll be in -- I'm starting a month-long Zoom
7 trial tomorrow, a bench trial, in a Lanham Act case which will
8 take awhile, so I'm going to be available. It's not like I'm
9 going anywhere. So, just let me know if there's an issue; and I
11:24:10 10 can just cut the feed from my trial and jump in and answer any
11 questions you have.

12 But just go ahead -- as part of your letter with
13 the briefing schedule and deadlines, just let Ms. Clair -- if
14 you know at this time, let Ms. Clair know what the date for the
11:24:26 15 deposition is and the Zoom information; and if not, then, when
16 you do get the Zoom information, just provide it to Ms. Clair;
17 and we're good.

18 MR. MATTHEWS: Thank you, Judge.

19 There's one other issue that I don't think needs
11:24:40 20 the Court's attention today, but I want to flag it as a
21 potential issue down the road. When we had our last hearing,
22 one of the issues related to deposing the corporate
23 representative of TMC who is the third-party Defendant in this
24 case; and the parties had, after speaking to TMC, agreed to
11:25:00 25 conduct that deposition on a half day on Monday, the 23rd, and

1 another half day on Monday, the 30th.

2 What we agreed to was that Plaintiff's questions
3 would be on the first half; Defendant's on the second.

4 Plaintiff has probably, I would say, a different view of that;
11:25:17 5 but that's my position.

6 The deposition went forward on the 23rd; and
7 then, on November 25th TMC filed bankruptcy.

8 THE COURT: Ah.

9 MR. MATTHEWS: We did not proceed with the deposition
11:25:32 10 on the 30th. Plaintiff's position is that I unilaterally
11 canceled it. It's my position that the automatic stay applied;
12 and I was not able to go forward with it, whether I wanted to or
13 not.

14 We are in the process of seeking to lift the stay
11:25:49 15 in the Court where TMC has filed bankruptcy so that we can
16 conduct that deposition. I'm hopeful that we'll be able to do
17 it in sufficient time where we can depose TMC before we have to
18 file our opposition to class certification.

19 So, I'm not seeking an extension of that at this
11:26:06 20 time; but I don't have complete control over that; and I don't
21 want -- I just want to flag it for the Court in case it's an
22 issue that comes up later. I don't want you to say, "Why didn't
23 you tell me about that?"

24 THE COURT: I completely understand. It's dually
11:26:22 25 noted. So, if there's an issue, I know that it's because TMC

1 filed bankruptcy; and you know, it might take a little bit
2 longer. So, that's definitely good cause for an extension, you
3 know, to some deadlines to get the briefing done.

4 So, if that happens, let me know. Hopefully,
11:26:41 5 you'll be able to work around it. But if that's an issue, let
6 me know; and we'll work with it.

7 MR. MATTHEWS: Thank you, Judge.

8 THE COURT: Mr. Hutchinson, anything on your side that
9 you anticipate might be a problem or might need my help?

11:26:56 10 MR. HUTCHINSON: No, your Honor. That's all the
11 Plaintiff has at this time. Thank you.

12 THE COURT: Okay. Well, all of you take care. Happy
13 holidays. I look forward to receiving your letter soon. If
14 there's any problems, just let me know. Hopefully, you'll get
11:27:12 15 together and set a briefing schedule since you're -- you know
16 where each other are -- you know where each other are right now.
17 So, call each other, set up a briefing schedule, get that on
18 file by -- I think I said Friday -- close of business on Friday.
19 Get that done; and then, we'll keep moving forward.

11:27:29 20 Okay. Thanks again, everyone. Good afternoon.

21 MR. MATTHEWS: Thank you, your Honor.

22 MR. HUTCHINSON: Thank you, your Honor.

23 THE COURT: Take care.

24 (Proceedings concluded at 11:27 a.m.)

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, to the best of my ability.

This record was taken through video or telephone conference which may have affected the quality of the record.

By: /s/ Gayle L Dye

12-16-2020

Gayle L. Dye, CSR, RDR, CRR

Date

EXHIBIT 1-E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRITTANY BURK) NO. 4:19-CV-663
)
)
VS.) Houston, Texas
) 12:28 p.m.
)
DIRECT ENERGY, LP, ET AL) DECEMBER 21, 2020

ZOOM HEARING
BEFORE THE HONORABLE GEORGE C. HANKS, JR.

UNITED STATES DISTRICT JUDGE

VOLUME 1 OF 1

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1 P R O C E E D I N G S

2 THE COURT: Okay, everyone, the next case on
3 the Court's docket is Cause Number 4-19-CV-663, Burk vs.
4 Direct Energy. Can counsel on the line just introduce
12:28:55 5 themselves to the Court and state the parties they
6 represent, starting with the plaintiffs?

7 MR. KLINGER: Good morning, Your Honor. Gary
8 Klinger on behalf of plaintiff, Brittany Burk.

9 THE COURT: Okay.

12:29:07 10 MR. KLINGER: And I am joined --

11 MR. HUTCHINSON: Sorry. Mr. Klinger was going
12 to introduce me as well. Daniel Hutchinson also here for
13 the plaintiff.

14 THE COURT: Great. And for defendant?

12:29:20 15 MR. MATTHEWS: Your Honor, this is Matt
16 Matthews for Direct Energy and also with me is my colleague
17 Will Thomas.

18 THE COURT: Great. Welcome, everyone.

19 I have now received the transcript. I
12:29:30 20 know it is not perfect, but I understand what was asked.
21 So it seems like the first dispute you guys have is whether
22 or not this needs to go by telephone or by videotape. This
23 definitely needs to go by videotape. No question about it.

24 Credibility is at issue with this witness.
12:29:48 25 I'm sorry, but I think I remember every time I have been

1 arrested, you know, that's kind of one of those things that
2 you just know about. And I remember exactly how many times
3 I was arrested.

4 It's got to be by video. This witness's
12:30:04 5 credibility is paramount, and if she is not available, the
6 jury needs to be able to figure out a way to determine her
7 credibility. So it is going to be by video. I mean,
8 that's the bottom line.

9 Now, the question then becomes when do you
12:30:18 10 finish the deposition? It sounds like Ms. Burk doesn't
11 have an Internet connection. I am not really sure. Is
12 there a way you guys can work around that to get her an
13 Internet connection and get her taken care of?

14 MR. KLINGER: Yes, Your Honor. As I
12:30:36 15 understand, Ms. Burk doesn't have a computer so she borrows
16 one for the deposition. And so last time she made
17 arrangements to appear for the deposition. This time she
18 made arrangements to appear for the deposition. The
19 Internet just conked out on her.

12:30:56 20 So she will need to make arrangements
21 again, and so I -- it just might be a few days until she
22 can make appropriate arrangements to borrow a computer and
23 make sure she is at a place where she can have peace and
24 quiet and do the deposition.

12:31:12 25 THE COURT: Okay. You know, I think you can

1 (Concluded at 12:36 p.m.)

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COURT REPORTER'S CERTIFICATE

4

I, Kathleen K. Miller, certify that the foregoing is a

5 correct transcript from the record of proceedings in the

6 above-entitled matter.

7

8 DATE: Jan. 13, 2021

/s/ Kathleen K Miller

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Kathleen K Miller, RPR, RMR, CRR

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